

August 25, 2006

State Water Resources Control Board
Division of Water Rights
PO Box 2000
1001 I Street, 14th Floor
Sacramento, CA 95812-2000

Attn: Karen Niiya or Eric Oppenheimer

Subject: North Coast Instream Flow Policy

To Whom It May Concern,

Several staff from the County of Sonoma, Permit and Resource Management Department attended the August 16, 2006, scoping session at the North Coast Regional Water Quality Control Board's office regarding the in-stream flow policy. The County of Sonoma is forwarding comments and questions for your consideration.

To put our comments and questions into context a little background is helpful. PRMD is a county permitting agency. We review and issue building, planning, and engineering permits for a broad range of projects including but not limited to: subdivisions, commercial developments, single family homes, water wells, septic systems, vineyards, grading and drainage. There are two main processing tracks for the vast variety of projects: ministerial and discretionary.

The ministerial process includes the single family homes, wells, septic systems, etc. If the project meets the ministerial criteria, typically contained in the Sonoma County Code, PRMD is obligated to issue the permit. The criteria or code has gone through a CEQA review and it is presumed that if the project meets the criteria, then no adverse impact will occur.

The discretionary process includes subdivisions, commercial developments, use permits, etc. The discretionary process meets CEQA on a project by project basis by PRMD sending our numerous referrals to federal, state and local agencies and to the public who then provide input into the review process. Upon receiving comments, planning staff set conditions for the project, which is then sent to a hearing and the conditions are discussed, potentially modified, and approved or not for the project. These conditions stay with the project and PRMD ensures the project is constructed in accordance with the approved conditions.

The following comments and questions are submitted for your consideration:

How the proposed policy will be implemented and who will implement the policy?

More to the point, we are concerned that counties will be required to implement to policy once it is adopted. Please give consideration to whom and how the proposed policy will be

implemented. Our preference is to have the policy implemented at the state level as this is a state policy. Further, State Water Board staff have discussed the inter-relationship between water rights and water quality. Due to this inter-relationship, we suggest the nine Regional Water Quality Control Boards implement this state policy as they are the state's agency for protecting water quality.

How will the proposed policy be enforced and by whom?

Please consider enforcement of this policy. Our Code Enforcement Division currently has an impressive work load and backlog. Workload is prioritized by the hazard to building and life safety, and public health. Any additional enforcement requirements would be prioritized accordingly. With 4300 enforcement cases currently pending, resolution of instream flow policy violations would be significantly delayed.

Keep the ministerial permit process ministerial within local government.

If consideration is given to having local government (cities and counties) implement the proposed policy, please consider who has legal authority to administer water rights. It is our understanding administering water rights is the purview of the State of California. If legal authority is or can be established and local government is considered as an implementing entity, please consider what effect the proposed policy will have on the county permitting processes described above. Particularly the ministerial permitting of water wells, reservoirs, building and other permits adjacent to Sonoma County streams and rivers. Our preference is to keep the process ministerial.

Please consider the two analogies where State retains authority. One is the California Fish and Game streambed alteration permits. In the ministerial process, the county has no authority to require a project proponent obtain a Fish and Game permit, however, PRMD informs a permittee if we believe the project may require a Fish and Game permit. The second analogy is the State Water Resources Control Board's General Permit for Storm Water Discharges Associated With Construction Activity. The county has no authority to require a project proponent obtain coverage under this general permit. However, we do inform applicant's of the need for this permit if the project exceeds the one acre land disturbance criteria. We also work closely with the North Coast Regional Water Quality Control Board's regarding this program. In both scenarios, our permit process is ministerial and the state retains its authority.

The proposed water rights policy should contain definitive criteria.

Project applicants need know if their projects are subject to the policy. An example of definitive criteria would be clearly defining, via maps and/or data, the subterranean streams for each waterway that will be affected by the proposed policy would greatly assist project applicants as well as keeping the process ministerial at the county level. If a well permit is submitted and the location was checked against a subterranean stream map, we would then be in a better position to inform the applicant of the need for a water right and whether to send the applicant to the Division of Water Rights or not. The delineation of subterranean streams would also prevent

costly and timely project by project evaluations or studies by individual applicants which would also slow the county permitting process.

Consider listing, mapping, or defining, the streams and areas that will be subject to the proposed policy.

State Water Board staff Dana Heinrich indicated there is funding currently available to map the subterranean waterways. We strongly encourage the state to provide this mapping in order to facilitate the implementation of this proposed policy. We are also concerned that without defining the subject areas, project by project studies would be required. This has the potential to create a costly and lengthy discretionary review and permitting process which would be unacceptable to the public and the county.

Establishing criteria and guidance regarding reservoirs would be beneficial.

Specifically, identifying the types of reservoirs, as well as filling methods, need to have water rights. A couple examples would be an off-stream reservoir diverting stream flows (fairly obvious but should be included), an off-stream reservoir capturing sheet flow runoff from a hillside (not so obvious but recent discussion with state board staff indicate water rights are necessary), an off-stream reservoir capturing rainfall only. These are a few examples but guidance on when to notify the applicant and the Division of Water Rights would greatly assist a locally implemented ministerial process.

Establish a policy/procedure for “Pipeline Projects”

Typically with new regulations or policies there is an implementation date or a starting point and projects completed prior to the implementation date are not subject to the new regulations. Please consider how the proposed policy will be implemented relative to existing projects.

Anticipate unintended consequences.

Reviewing the proposed policy from every perspective possible will minimize the risk of unintended consequences. We look forward to reviewing and commenting on the actual language of this proposed policy once it has been drafted and prior to any adoption in an effort to provide any assistance or guidance needed, and minimize the unintended consequences.

Sincerely,

Nathan Quarles
Engineering Division Manager
Permit and Resource Management
County of Sonoma